

public comment period on the proposed listing and designation, the information received following the provision of the draft economic analysis to the public on April 26, 1996, the comments and information provided during the 30-day comment period that opened on April 7, 1999, including the public hearing, and the comments and information received during the 60-day comment period opened on April 5, 2001, for the notice of intent to prepare an EIS and public scoping meetings held on April 17, 23, 24, and 27, 2001 (April 7, 1999; 64 FR 16890). We also considered information and comments received on the recent proposal to designate critical habitat (June 6, 2002; 67 FR 39206).

Since the listing of the silvery minnow in 1994 (July 20, 1994; 59 FR 36988), no progress has been made toward reestablishing this species within unoccupied areas (e.g., river reaches on the middle Pecos, lower Rio Grande). Because the silvery minnow has been extirpated from these areas, Federal agencies have not consulted with us on how their discretionary actions may affect the silvery minnow. We conclude these areas (e.g., river reaches on the middle Pecos and the lower Rio Grande) are essential to the conservation of the minnow, but we have not designated them as critical habitat (*see* "Exclusions Under Section 4(b)(2) of the Act" section).

This critical habitat designation differs from the final critical habitat designation we made in 1999 (July 6, 1999; 64 FR 36274), which was subsequently set aside by court order. The differences also reflect the best scientific and commercial information analyzed in the context of the final Recovery Plan (*see* "Recovery Plan" discussion above) and our conservation strategy for this species. Although we could have designated two additional critical habitat units to respond to the Recovery Plan's recommendation that additional areas are required to achieve recovery (Service 1999) (*see* "Recovery Plan" discussion above), we believe that inclusion of these areas under a critical habitat regulation could hinder our future conservation strategy (*see* "Exclusions Under Section 4(b)(2) of the Act" section above) and actually impede recovery of the silvery minnow.

Recovery requires protection and enhancement of existing populations and reestablishment of populations in suitable areas of historic range. The Recovery Plan identifies "the necessity of reestablishing silvery minnow in portions of its historic range outside of the middle Rio Grande in New Mexico." The Recovery Plan identified potential areas for reestablishment of silvery

minnow in certain river reaches of the Rio Grande and Pecos River. The Recovery Plan also recommended a thorough analysis of the reestablishment potential of specific river reaches within the historic range of the silvery minnow.

We have determined that one of the most important goals to be achieved toward the conservation of this species is the establishment of secure, self-reproducing populations in areas outside of the middle Rio Grande, but within the species' historic range (Service 1999). Thus, we have outlined our conservation strategy for the silvery minnow (*see* "Exclusions Under Section 4(b)(2) of the Act" section above). Because the species occupies less than 5 percent of its historic range and the likelihood of extinction from a catastrophic event is greatly increased (Hoagstrom and Brooks 2000; Service 1999), we believe that additional populations should be established within certain unoccupied reaches (*i.e.*, areas outside of the current known distribution). Nevertheless, any future recovery efforts, including reintroduction of the species to areas of its historic range, must be conducted in accordance with NEPA and the Act.

The recent trend in the status of the silvery minnow has been characterized by dramatic declines in numbers and range despite the fact that this species evolved in rapidly fluctuating, harsh environments. Moreover, none of the threats affecting the silvery minnow has been eliminated since the fish was listed (July 20, 1994; 59 FR 36988), and its status continues to decline (Dudley and Platania 2001, 2002b, 2002c, 2002d, 2002e). The known silvery minnow population within the middle Rio Grande has become fragmented and isolated and is vulnerable to those natural or manmade factors that might further reduce population size (Dudley and Platania 2001, 2002a, 2002b). Because there have been low spring peak flows in the Rio Grande in some recent years (e.g., 2000) and a related decrease in silvery minnow spawning success, the population size of silvery minnow continued to decline through the winter of 2002 (Dudley and Platania 2001, 2002a, 2002b, 2002c, 2002d, 2002e). We conclude that the species' vulnerability to catastrophic events, such as prolonged periods of low or no flow, has increased since the species was listed as endangered in 1994 (July 20, 1994; 59 FR 36988).

It is widely recognized that major efforts to reintroduce the silvery minnow to large reaches of its historic habitat in the Rio Grande and Pecos River will not likely occur without either natural or induced changes in the

river, including changes affecting the existing fish community, habitat restoration, and coordinated water management (e.g., Service 1999). Nevertheless, we conclude that conservation of the silvery minnow requires habitat conditions that will facilitate population expansion or reintroduction. As an example, we are currently involved in developing several efforts to assist in the recovery of the silvery minnow and other imperiled species (e.g., Federal and non-Federal efforts to create a middle Rio Grande Endangered Species Act Collaborative Program). Any future habitat restoration efforts conducted by us or other Federal agencies within the species' historic habitat will be analyzed through NEPA and will be conducted in accordance with the pertinent sections of the Act and Federal rulemaking procedures.

As discussed above in the comments section, non-native fish species may adversely affect the silvery minnow. However, non-native fish have the potential to be removed or reduced to acceptable levels using a variety of control or management techniques. For example, the New Mexico State Game Commission recently passed a regulation limiting the species that can be used as baitfish in the Pecos River (New Mexico Department of Game and Fish 2000). As part of the Federal rulemaking process, we sought further information regarding the role of unoccupied river reaches within the historic range of the silvery minnow, including those reaches with non-native fish species (e.g., plains minnow) present or those reaches that have the potential for low or no flow events. We were particularly interested in assistance in describing the existing habitat (e.g., flow) conditions for the river reach below San Acacia Diversion Dam on the middle Rio Grande. However, we did not receive additional information on these areas to refine this final designation.

It is important to note that the mere presence of non-native aquatic species does not eliminate an area from being considered for designation as critical habitat. For example, the relationship between the introduction of the plains minnow and extirpation of the silvery minnow is unclear (*see* discussion above). Although the Recovery Plan suggested that the plains minnow would be the primary limiting factor precluding successful reestablishment of the silvery minnow to the Pecos River (Service 1999), we have little data from which to draw firm conclusions for the extirpation of the silvery minnow from the Pecos River. We recognize that any efforts to reestablish the silvery minnow